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Situation in Kasaï*

Report of the United Nations High Commissioner for Human Rights

The United Nations High Commissioner for Human Rights has the honour of sending the Human Rights Council the report of the team of international experts on the situation in Kasaï, in accordance with resolution 35/33 of the Human Rights Council.

* The present report was submitted late in order to include recently received information.

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Report of the team of international experts on the situation in Kasaï

Summary

The team of international experts is shocked by the extent of the violence that has killed thousands and by the catastrophic human rights situation that has prevailed in the Kasaï region since 2016. The present report sets out information on just a small portion of the acts and crimes that have been committed. The team is also concerned about the low level of attention given to this tragedy and the lack of means engaged to bring it to an end.

The team confirms that the defence and security forces, the Kamuina Nsapu militia and the Bana Mura militias have committed numerous atrocities, including many cases of sexual violence and abusive treatment of children that can be qualified as crimes against humanity or war crimes.

The team is deeply concerned about the humanitarian situation, with the displacement of an estimated 1.4 million people, whose situation remains extremely precarious.

In the light of the magnitude and gravity of the crimes that have been committed, there remains a very serious problem of impunity. A serious judicial investigation must be carried out for the perpetrators of these crimes to be brought to justice and judged and for the rights of the victims to be restored.

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I. Introduction

1. In response to the wave of violence sweeping Kasaï since 2016, the Human Rights Council on 23 June 2017 decided unanimously, by its resolution 35/33, to establish a team of international experts on the situation in Kasaï, for a period of one year.

2. On 26 July 2017, the United Nations High Commissioner for Human Rights appointed Bacre Waly Ndiaye of Senegal (Chairman), Fatimata M'Baye of Mauritania and Luc Côté of Canada as international experts. They were assisted by a secretariat set up by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and based in Kananga, Kasaï Central Province.

3. In March 2018, the team of international experts presented an oral report to the Human Rights Council.

4. The team would like to thank the Democratic Republic of the Congo for its cooperation and for facilitating access to the country. It expresses its thanks to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) for its support, as well as to United Nations bodies, including OHCHR and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and the governmental and non-governmental organizations that provided it with their cooperation. Lastly, and above all, it thanks the victims and witnesses who agreed to tell their stories.

II. Terms of reference

5. In accordance with paragraph 10 of resolution 35/33, the team of international experts was assigned the tasks of collecting and preserving information, determining the facts and circumstances of presumed violations of human rights and international humanitarian law in Kasaï and communicating the conclusions of this investigation to the judicial authorities of the Democratic Republic of the Congo in order to establish the truth and ensure that the perpetrators of deplorable crimes are all held accountable to before the country's judicial authorities.

6. The team believes that its terms of reference were to establish the facts and circumstances of violations of human rights and international humanitarian law committed to date and since 2016 in the provinces of Kasaï, Kasaï Central, Kasaï Oriental, Lomami and Sankuru[1] likely to constitute crimes under international criminal law. In the light of the broad terms of reference given to the team and the time frame it was assigned, the team gave priority to investigating the most serious acts of violence, such as attacks on the right to life and physical integrity, and specifically sexual violence, gender-based violence and violence committed against children.

7. The team also considers that its mandate is to examine the roles of all the parties involved in the wave of violence that has affected Kasaï since 2016, including the defence and security forces, the Kamuina Nsapu militia and the Bana Mura militias.

III. Methodology and standard of proof

8. The international team of experts collected information from many sources on the wave of violence. It established a selection methodology concentrating on the most serious and symptomatic incidents, and it conducted interviews with 524 victims, witnesses, presumed perpetrators and other sources. Documents, photographs and videos were collected in support of the testimonies.

[1] In the present report, "Kasaï" or "the provinces of Kasaï" refer to those five provinces, while "Kasai Province" refers specifically to the province of that name.

9. The team encountered various obstacles to the effective conduct of its investigation. The vast size of the territory in question, coupled with the fact that access to witnesses was difficult owing to road conditions and security issues, presented daily challenges. Delays in deploying the team in the field also posed challenges.

10. The team adopted the same standard of proof as the majority of international commissions of inquiry and other fact-finding missions, namely, that there should be "reasonable grounds to believe", meaning that corroborating information must be received from at least two sources.

11. The team incorporated a gender perspective in all its work and paid special attention to allegations of sexual and gender-based violence. In addition, it also established an investigation methodology adapted to the specific needs of minors.

12. Notwithstanding the fact that procedures were set up in line with best practices for witness protection and confidentiality, a number of witnesses expressed concern about the sharing of their testimonies when they related to acts of violence committed by the defence and security forces or by their own communities.

IV. Applicable law

13. The Democratic Republic of the Congo is inter alia a party to the International Convention on the Elimination of all Forms of Racial Discrimination; the International Covenant on Civil and Political Rights and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and the Convention on the Rights of the Child and its first two Optional Protocols. It is also a party to the African Charter on Human and Peoples' Rights and its protocol concerning the rights of women in Africa and the Pact on Security, Stability and Development in the Great Lakes Region and its various protocols.

14. The Democratic Republic of the Congo is a party to the four Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as to the Rome Statute of the International Criminal Court, whose definitions of international crimes were recently incorporated into the country's Criminal Code.

15. The international team of experts has also considered Congolese national law, in particular the safeguards for human rights included in the Constitution.

V. Background

16. Since July 2015, the Kasaï region has consisted of five provinces: Kasaï, Kasaï Central, Kasaï Oriental, Lomami and Sankuru.[2] Kasaï is one of the least developed regions of the country. Despite an abundance of natural resources, the economy has been in ruins for several decades. Extreme poverty and chronic underdevelopment have persisted because of the very low level of State investment in the region's basic services.

17. The Kasaï region, whose population is mostly Luba, has traditionally been a stronghold of the main opposition party, the Union pour la démocratie et le progrès social, which explains in part why the region is marginalized at the national level. A wave of violence erupted in Kasaï in 2016 in a national context of tension related to the presidential election. In December 2016, the presidential majority and the political opposition signed an agreement calling for a presidential election by the end of 2017 and prohibiting President Kabila from running for a third term. Yet in 2017 it became clear that the election would not take place by the end of the year as stipulated in the agreement. Demonstrations calling for the agreement to be respected were forbidden or suppressed in several cities. The Kasaï region was not particularly affected by the demonstrations. While it may be difficult to

[2] Redistricting, called for by the Constitution, was implemented in July 2015.

conclude that national politics had nothing to do with the authorities' reaction in handling the Kasaï crisis, there is little proof of a direct link between the wave of violence in Kasaï and the electoral process.

18. In the run-up to independence, violence had broken out within the Luba population. The Luba people share a common language, Tshiluba, and at this juncture they are relatively united. On the other hand, with the division of the former Province of Kasaï Occidental into two new provinces in 2015, tensions grew between Luba groups and Chokwe and Pende people, who live in the southern and eastern parts of Kasaï Province. While Kasaï Central remains dominated by the Luba population, the Luba have lost influence in Kasaï Province to the Chokwe and the Pende. It is also impossible to consider the crisis in the Kasaïs in isolation from pre-existing local conflicts involving customary chiefs and the sharing of land and mining resources.

19. Customary authority, which is closely linked to ethnic identity, is an important part of the local power system. Customary chiefs, in addition to performing important spiritual functions, play a major role in public administration, village management and access to land and local justice. They are named according to traditional customs and are subsequently recognized by the public authorities, who pay them a salary. While the role of customary chief is supposed to be apolitical, the State authorities regularly bring pressure to bear on the chiefs to encourage them to fall into line politically with the provincial and national authorities, going so far as to refuse to recognize those who nonetheless have been named through the traditional practice.

20. Belief in witchcraft and supernatural powers remains widespread in society, including in the defence and security forces. Jujus are given a great deal of importance. A large number of customary rules govern the life of the community, and breaking them can lead to serious consequences.

VI. Parties involved in the crisis

A. Defence and security forces

21. The Democratic Republic of the Congo has still not been able to establish a well-organized, professional army. The Armed Forces of the Democratic Republic of the Congo (FARDC) continue to commit frequent and serious human rights violations against civilians and to live off the civilian population.

22. When the crisis began in Kasaï, soldiers of the 2101st regiment were stationed in Kananga. They reported to the 21st military region, based in Mbuji-Mayi, Kasaï Oriental. The regiment, which had been under the fifth integrated brigade, was composed of a mix of reintegrated former militia members and troops of the national army. The presence in the regiment of Kinyarwanda-speaking military personnel from the eastern part of the country was hotly criticized by Chief Kamuina Nsapu, who accused them of being foreigners. Some military commanders had reportedly been involved in serious human rights violations in other parts of the Democratic Republic of the Congo.

23. FARDC initially reacted with brutality against the Kamuina Nsapu militia. Despite the arrival of reinforcements at the end of 2016, which brought the number of military personnel in Kasaï to 7,000, FARDC failed to stop the rapid expansion of the militia. On 9 March 2017, the Government established the Greater Kasaï Operations Sector, with its command centre in Kananga, in order to confront the Kamuina Nsapu militia, which the Government qualified as terrorists. In the territory of Kamonia, in Kasaï Province, FARDC conducted operations with the support of the Bana Mura militia. Towards the end of 2017, the authorities started to reduce the number of troops in Kasaï.

24. The Congolese National Police clearly lacked equipment and training to respond to the violence in Kasaï, despite the arrival of a unit of reinforcements specialized in maintaining order.

B. Kamuina Nsapu militia

25. The Kamuina Nsapu militia, which is mostly Luba, emerged owing to a customary power struggle. Following the death of the former Kamuina Nsapu chief, Ntuma Mupala, chief of the Bajila-Kasanga clan in Dibaya territory of Kasaï Central Province, Jean-Prince Mpandi was named as successor. The Bajila-Kasanga chieftainship belongs to the Bashilange federal kingdom, whose chiefs since the colonial period have ruled all the way to neighbouring Angola. The Kamuina Nsapu chief is the military leader of the Bashilange kingdom.

26. Mr. Mpandi's request to be recognized as the Kamuina Nsapu customary chief was denied by the Minister of the Interior, Évariste Boshab, for political reasons. The authorities tried to support Ntenda Tshiambi, the customary chief of the village of Ntenda and a rival of Mr. Mpandi, who was politically close to the then-Governor of Kasaï Central, Alex Kande.

27. On 3 April 2016, Mr. Mpandi's home was searched, in his absence, for weapons. This incident reportedly exacerbated his animosity against the authorities and his rival, Mr. Tshiambi, whom he suspected of being behind the search.

28. Upon his return from South Africa Mr. Mpandi accused the authorities of desecrating his jujus and of attempting to sexually abuse his wife. He thus announced that he would set up a "political and customary" movement on the basis of the practices and legitimacy of customary power and the system of traditional beliefs. His movement opposed the State authorities and "foreigners" who were responsible, in his view, for harassing the people and for the lack of economic opportunity.

29. In his village and Dibaya territory, Kamuina Nsapu, the customary chief, recruited militia members, the majority of whom were children, and in June 2016 began to set up barriers to control movement by State officials. The first armed attack by the Kamuina Nsapu militia was directed against the village of the rival chief, Mr. Tshiambi. Later, the militia attacked symbols of the State in Dibaya territory. As efforts by the political authorities to find a negotiated solution with the Kamuina Nsapu customary chief were ineffective, the authorities quickly opted for the use of force.

30. On 12 August 2016, the Kamuina Nsapu chief was killed in an attack on his village by the defence and security forces, and his body was transported to Kananga, provoking indignation among the Bashilange. The fact that the Kamuina Nsapu family was part of the kingdom of Bashilange led to the rapid expansion of the militia. Thanks to an organized recruitment system and the placement of *tshiotas* (initiation halls containing sacred fires), the militia spread. Emissaries of the late Kamuina Nsapu, sometimes called "apostles", travelled from village to village in an ever expanding area to set up their *tshiotas*, beheading village chiefs who opposed their movement. *Tshiotas* were thus set up in the five provinces of Kasaï. Villagers were called upon to voluntarily join the movement. Those who refused were often beheaded.

31. In the *tshiotas*, in the presence of an "apostle" or a high-level chief often called the "president", the recruits, including young children, had to subject themselves to a "baptism" ritual, which involved drinking an alcoholic mixture and performing other rites. Once this was done, the recruits were part of the militia, where ancestral beliefs and rituals played an extremely important role. In order to ensure that militia members would be invincible against firearms, these beliefs required the observance of strict rules. The *tshiotas* were also favoured as places for beheadings, often performed by children, as well as for acts of cannibalism. Heads and other body parts of victims of attacks were brought there, along with their blood.

32. Units were organized and attacks were planned as well in the *tshiotas*. Before clashes, the militia members took part in rituals involving the swallowing of alcoholic mixtures. Typically, when the fighting occurred, the Kamuina Nsapu militia was deployed with one or more girls called "ya mama" in the front line. According to their beliefs, they had the power to catch firearm projectiles with their skirts. Just behind them were boys armed with knives and sticks. According to the beliefs, they had the magical power to

transform into lethal weapons. Older militia members with better equipment such as traditional firearms or hunting weapons, and sometimes with automatic weapons, followed in the last line.

33. The number of militia members in an operational group varied but was generally between 15 and 30, most of whom were children. At the head of each group was a "general" or "*capita*" During the operations, the Kamuina Nsapu militia almost always wore the same distinctive clothing: Red headbands, with small knives and jujus around the neck. The Kamuina Nsapu militia managed in a very short time to recruit militia members, carry out attacks in the five provinces of Kasaï and take control of villages and towns for several weeks or even months at a time.

34. Since 2017, the militia has become increasingly violent and its attacks have taken on an ethnic character outside areas where the language of the Luba people is spoken.

C. Bana Mura militias

35. The Bana Mura militias are made up mostly of Chokwe men, but also include some Pende and Tetela men. They were set up in February and March 2017 in certain parts of the Kamonia territory and the town of Tshikapa, in Kasaï Province, in response to the attacks by the Kamuina Nsapu militia, which is Luba, against Chokwe and Pende people.

36. The Bana Mura militiamen had connections with certain representatives of the State. In the town of Kamonia, meetings were held between political and security authorities and local chiefs in order to set up militia groups. Some local leaders, in particular the chief of the village of Muyeji, played an important role in the organization of the Bana Mura militias. While it is difficult to find a shared chain of command, there were links between the various Bana Mura militias. For example, weapons distributions organized by the local authorities took place in several parts of the territory of Kamonia.

37. The Bana Mura militiamen were for the most part locally recruited young men between the ages of 18 and 22. The militiamen often had new weapons (machetes and hunting rifles).

38. The operations carried out by the Bana Mura militias were particularly violent and were often conducted with the defence and security forces, and sometimes under their command. In other cases, the Bana Mura militias operated alone, with the defence and security forces refraining from intervening to stop the violence and help the victims. Recently, the defence and security forces have sometimes engaged the Bana Mura militias.

VII. Establishment of the facts and circumstances

A. April–August 2016: Beginning of the violence in Dibaya territory, Kasaï Central

39. The search of the home of the customary chief, Kamuina Nsapu, on 3 April 2016 and the subsequent establishment of his "political and customary" movement, followed by the recruitment of militia members, marked the onset of the violence in Dibaya territory of Kasaï Central. Between May and August 2016, several hundred militia members, for the most part girls and boys, were thus recruited in his village and in Dibaya territory.

40. Beginning in June, the Kamuina Nsapu militia set up barriers around the village of Kamuina Nsapu to control the movement of the police, the military and other representatives of the State. On 22 July, a first attack was launched against symbols of the State, leading to the destruction of the police station in the village of Mfuamba. The next day, the village of the Ntenda customary chief, who was in conflict with the Kamuina Nsapu customary chief, was attacked. This was the first deadly attack by the militia, and it left at least six dead, four persons with bullet wounds and over a hundred houses burned.

41. The Kamuina Nsapu customary chief then led a series of attacks in Dibaya territory, in particular against the towns and villages of Mfuamba, Bukonde, Tshikula, Dibaya and Tshimbulu. These assaults led to the destruction and looting of public buildings and similar structures and to attacks against persons representing or considered to represent the public authorities. Officers of the Congolese National Police were the main victims of these attacks. The deadliest raid was against the town of Tshimbulu. It was ordered by the Kamuina Nsapu chief and left at least five police officers and five militiamen dead.

42. Following the failure of mediation efforts by the authorities, a major military operation was launched to halt the advance of the militia. With the arrival of military reinforcements in Kananga, the operation was aimed at taking Dibaya territory by attacking on several fronts that were opened on the main roads, the final destination being the village of the Kamuina Nsapu chief. Between 10 and 12 August, violent clashes took place between FARDC and the Kamuina Nsapu militia, in particular in Tshimbulu, Dibaya, Tshikula, Sampi, Bitanda and Kabunji. The armed forces fired on the militia members, including many unarmed children, including with the use of rocket launchers. There were also dead and wounded among the members of the armed forces.

43. On 12 August, the defence and security forces led an operation to kill the Kamuina Nsapu customary chief in his native village. Following clashes that left several dead, the customary chief was shot dead by FARDC, and his body was moved to Kananga.

44. Fighting between the Kamuina Nsapu militia and the defence and security forces continued in Dibaya territory. In mid-August, for instance, in front of the Tshikula Catholic Mission, FARDC fired indiscriminately at civilians and Kamuina Nsapu militia members, many of whom were children, causing dozens of casualties. Some of the bodies were stacked onto trucks and transported to the Kananga Officer Training School for burial.

B. September–December 2016: Spread of the Kamuina Nsapu movement to the provinces of Kasaï Central, Kasaï Oriental and Kasaï

45. The death of the Kamuina Nsapu customary chief did not bring the violence in Kasaï to an end. On the contrary, beginning in September 2016, the Kamuina Nsapu militia quickly spread further afield. While remaining active in Dibaya territory, the militia expanded into other territories of Kasaï Central and into Kasaï Oriental beginning in September/October 2016. By the end of November, it reached Kamonia territory, in Kasaï Province, along the Kananga-Tshikapa road.

1. Kasaï Central Province

46. On 22 and 23 September 2016, the Kamuina Nsapu militia attacked the airport in Kananga. A female employee of Congo Airways, several soldiers and many militiamen were killed in clashes with FARDC. The Kamuina Nsapu militiamen burned down buildings in the vicinity of the airport. Subsequently, FARDC fired rocket-propelled grenades into the neighbourhoods near the airport, resulting in the death of civilians, whose bodies were transported to the Officer Training School.

47. At the end of September, in operations to track down the militia, the armed forces wounded, raped and killed civilians in Kananga and in nearby villages such as Mwamba-Mbuyi and Tshimpidinga.

48. In Dibaya territory, the violence continued between September and December. On 8 December, for instance, the Kamuina Nsapu militia set fire to the headquarters of the Congolese National Police in the village of Bukonde and hacked a member of the National Intelligence Agency to death in a machete attack. Villagers were also beaten and wounded with machete blows. FARDC arrived the next day and engaged the militia, killing many militia members, including children. The FARDC members who remained in Bukonde after the clashes looted houses and killed at least one civilian.

2. Kasaï Oriental Province

49. In October 2016, the Kamuina Nsapu movement spread to Kasaï Oriental. Violent acts occurred in several villages in Kabeya-Kamwanga territory until April 2017. For example, on 13 October 2016, after two members of the militia were executed by the defence and security forces in Kena Nkuna, about 100 Kamuina Nsapu militia members, most of whom were children, entered the town and burned down public buildings and similar structures. FARDC thereupon arrived and clashes took place throughout the day, leaving several dead among the militia members and the civilian population. On 15 October FARDC launched a "door-to-door" operation to search for militia members, and several civilians were executed. In the following weeks, the armed forces raped and executed civilians and systematically looted and destroyed homes.

50. Violent acts were committed in several villages in Miabi territory, in Kasaï Oriental. For example, on 18 December 2016, members of FARDC clashed with Kamuina Nsapu militiamen in the village of Mwanza Lomba. They opened fire on militiamen carrying sticks and knives, killing and wounding several people, including women and children, and then executing the wounded who had fallen. After that incident was covered by the media, eight of the nine soldiers tried for these crimes were convicted in July 2017.

3. Kasaï Province

51. The wave of violence linked to the Kamuina Nsapu movement reached the Kananga-Tshikapa road, in Kamonia territory, Kasaï province, between late November and early December 2016. As a result of a customary power struggle, a chief who was not recognized by the authorities visited Kasaï Central Province with the aim of returning with the Kamuina Nsapu jujus. In line with the usual pattern, children were recruited into the militia, and some village chiefs who refused to pledge support were beheaded.

52. The first incident in Kamonia territory took place on 28 November, when two policemen were killed by Kamuina Nsapu militiamen in the Mbawu communities. On 4 and 5 December, many militia members, including girls and boys, entered the town of Tshikapa. Clashes took place near the Kasaï bridge, in the Kele neighbourhood and around the airfield near the town centre.

53. After this attack, FARDC conducted reprisals in villages of the Mbawu communities and along the Kananga-Tshikapa road; many civilians were shot to death by the armed forces, including in the villages of Mfuamba, Mbawu and Kabeya-Lumbu. On 6 December the armed forces arrived in large numbers in the village of Tshitadi, where there were no militiamen present. They burned many houses down and opened fire on the population, killing dozens of men, women and children.

C. January–July 2017: Eruption of violence throughout Kasaï and the ethnic dimension of the conflict

54. From January to July 2017, the Kamuina Nsapu movement and its militia continued to advance with the aim of reaching all provinces of Kasaï. Military reinforcements were sent and a military operations sector was established in early March 2017. Both the level of violence associated with the clashes and the number of abuses committed by the Kamuina Nsapu militia and the defence and security forces against civilians increased exponentially, peaking between January and May. Moreover, from March onwards, the conflict took on a pronounced ethnic dimension in Kamonia territory, in Kasaï Province, with the arrival of the Kamuina Nsapu militia in non-Luba-speaking areas and the emergence of the Bana Mura militias.

1. Kasaï Central Province

(a) Dibaya territory

55. There has been an upsurge in violence in Dibaya territory, the home of the Kamuina Nsapu movement. On 5 January 2017, following incursions by members of the Kamuina

Nsapu militia in Tshimbulu, which had resulted in the destruction of the police station and the death of a policeman, FARDC soldiers arrived to confront them. More than 20 members of the militia, most of whom were children armed with sticks, were killed by firearms and rocket launchers; some militia members were killed while lying on the ground. Local residents were also injured or killed by projectiles. At least three other clashes took place in Tshimbulu, including on 10 February, when at least 100 people were killed. The FARDC soldiers raped women and girls, looted property and burned down houses.

56. Similar incidents took place in a large number of villages in the territory, including Bukonde, Dibaya, Kabeya-Madi, Bena Kalegna, Muan Mukaya, Kazadi, Kaulu, Lumbudi, Lubondaye and Lubi. Rape, often gang rape, looting, destruction of property and homes and summary executions committed by FARDC were documented there. For the first time, the Kamuina Nsapu militia attacked the civilian population of this territory.

57. Two members of the Group of Experts on the Democratic Republic of the Congo established pursuant to Security Council resolution 1533 (2004), Zaida Catalán, a dual Swedish and Chilean citizen, and Michael Sharp, a United States citizen, were killed near the village of Bukonde on 12 March. Ms. Catalán's body was decapitated. Their four companions from the Democratic Republic of the Congo are still missing. Judicial proceedings are ongoing.

(b) Town of Kananga

58. In the town of Kananga, several *tshiotas* were erected by the Kamuina Nsapu militia, of which at least three were located in the commune of Nganza. Many children, both boys and girls, were recruited in the first few months of 2017. Multiple clashes took place in the town between the militia and the defence and security forces between January and April, resulting in the death of several hundred people.

59. On the night of 14 March, FARDC launched a planned attack on three *tshiotas* in the commune of Nganza where hundreds of Kamuina Nsapu militia members, mostly children aged 8 and over, were sleeping. The FARDC soldiers used firearms and rocket launchers, causing many casualties among the militia members. They also killed injured children, sometimes with knives. The bodies were stacked onto trucks and taken away by the soldiers.

60. Between 28 and 30 March, FARDC launched "door-to-door" operations in the commune of Nganza, during which many civilians, men, women and children, were wounded or killed indiscriminately. Young children were slaughtered in their sleep. Some bodies were taken away by FARDC, while others were buried in several mass graves by soldiers or local residents.

(c) Kazumba territory

61. A number of isolated incidents were documented in Kazumba territory: on 10 and 11 March 2017, members of the Kamuina Nsapu militia attacked Notre-Dame du Kasaï Cathedral, located on Malandji Hill, stripping and beating several of the clergy and cutting off the parish carpenter's right hand. On 30 April, the militia executed six members of a delegation of national school inspectors, near Kafumba. On 7 May, FARDC executed at least 79 people, including 19 children, and raped 4 women at the Tshikulu village market.

(d) Luiza territory

62. All parts of Luiza territory were the scene of acts of violence between late January and July 2017. The Kamuina Nsapu militia arrived in the territory in late January from Dibaya territory. The militia was under the command of a Kamuina Nsapu chief and an associate, both of whom were from Dibaya. The chief set up several *tshiotas*, including two large ones in the villages of Kitoko and Yangala, and travelled to the various villages in the territory to convince the village chiefs to join the movement or to force them to do so. Those who refused were beheaded. In the villages where they were met with hostility, the militia members retaliated against the inhabitants by looting and burning down their homes. Several hundred girls and boys were recruited into the militia, including in the villages of

Kitoko, Moma, Kadongo, Masuika, Mubinza and Tulume. The children were promised free schooling for anyone who killed soldiers.

63. In addition to attacks against property and persons that were symbols of State authority or perceived as such, the militia also committed abusive acts against civilians. Those inhabitants who did not respect the rules imposed by the militia were "tried" in the *tshiotas* before being beaten or beheaded. Rape, sometimes in front of the victims' children, was committed in several villages, including Muzodi, Masuika and Kamayi. The Catholic Church, which had been largely spared in the past, was a prime target for the militia in Luiza territory, and much of its property and buildings were destroyed. Many schools were also destroyed by the militia, including in Kamushilu, Kadongo and Malambo.

64. Between 3 and 5 February, several violent clashes between the Kamuina Nsapu militia members, the majority of whom were children, and FARDC took place in the village of Nguema, resulting in the death of several dozen militia members. From that point until mid-July, numerous skirmishes took place, including in the villages of Musefu, Kadongo, Masuika, Mubinza, Lumpungu, Kalemba Mbuji, Tulume and Yangala. Hundreds of Kamuina Nsapu militia members, including children, were killed in those clashes, and many civilians lost their lives as a result of the indiscriminate use of force by FARDC. On 7 April, FARDC opened fire indiscriminately on the inhabitants of the village of Muzodi, killing some 20 villagers. Rape, including gang rape, was committed by members of FARDC, including in the villages of Kadongo, Masuika and Yangala. FARDC set fire to every village that they stopped in to drive out the militia, including Kadongo, Moma, Masuika, Yangala and Masala; FARDC destroyed several dozen villages and burned down several thousand homes.

2. Lomami Province

65. In this province, the Kamuina Nsapu militia systematically recruited new members by force. Those who refused to join the movement, including children, were beheaded. Members of the militia raped women, thus breaking their own rules prohibiting such behaviour.

3. Kasaï Province

66. While in Kasaï Central the Kamuina Nsapu militia had mainly attacked symbols of State power, in Kasaï Province, their target was the non-Luba-speaking population, particularly in Luebo and Kamonia territories.

(a) Luebo territory

67. The Kamuina Nsapu movement emerged in Luebo territory in December 2016, primarily in the village of Konyi. A Kamuina Nsapu chief recruited militia members, including children, and ordered the construction of several *tshiotas* in the territory.

68. The Kamuina Nsapu militia first attempted to take control of Luebo town in early March 2017, but it was caught by FARDC ambushes. At least 20 bodies of civilians, including those of women and children, were discovered after the clashes at the entrance to the town.

69. On the morning of 31 March, after FARDC had left the town, several hundred Kamuina Nsapu militia members entered without resistance and took control. The militia members were armed with sticks, knives, machetes, some shotguns and, in some cases, weapons of war. Most public buildings and those belonging to the Catholic Church, as well as several schools, were destroyed or burned down. At least four civilians were killed.

70. The Kamuina Nsapu militia set up a *tshiota* in the centre of Luebo. Several chiefs from communities in Luebo territory took turns in controlling the town, and rules were imposed on its inhabitants. On 9 April, members of the Kamuina Nsapu militia forced a female restaurateur and her husband's son to have sex in public before killing and beheading them. The same day, an officer of the Congolese National Police and two others were also beheaded. Rape was also committed by members of the militia in early April.

71. Around 16 April, FARDC retook the town after several violent clashes during which many Kamuina Nsapu child militiamen and civilians lost their lives. FARDC then destroyed and burned down villages in the vicinity of the town of Luebo where there were concentrations of militia, killing civilians in the process. Several mass graves were identified. The clashes in Luebo territory reportedly left at least 770 people dead, including 350 women and 420 men, and 208 people injured.

(b) Kamonia territory: Tshikapa-Kananga road

72. Between January and June 2017, the Kamuina Nsapu militia remained particularly active on the Tshikapa-Kananga road. Around 24 March, 37 officers of the national police and 2 members of FARDC were killed and, in some cases, beheaded by the militia in the village of Malenga. A large amount of weapons and ammunition was also seized by the militia.

73. FARDC used excessive means to stop the Kamuina Nsapu militia, resulting in the death of many civilians, particularly in and around Mbawu and in the villages of Kabeya-Lumbu and Kamuesha.

(c) Tshikapa town

74. Between February and June 2017, acts of violence took place in the town of Tshikapa, where inhabitants live in neighbourhoods divided along ethnic lines.

75. In March, the Kamuina Nsapu militia beheaded several officers of the Congolese National Police, including a commander. The level of violence used by the militia against civilians subsequently increased and beheadings, mutilation and rape, which often took the form of gang rape and was so violent that some women died as a result of their ordeal, were committed in the town of Tshikapa and in the surrounding villages.

76. Several clashes between FARDC and the Kamuina Nsapu militia took place in Tshikapa in March and April in the vicinity of the general hospital and in the communes of Kele and Kanzala. FARDC made no distinction between militia members and inhabitants as it wounded and killed Luba-speaking civilians. In addition, soldiers broke into inhabitants' homes at night and committed serious abuses against them. They beheaded men, raped numerous women and girls, abducted young girls and even disembowelled a pregnant woman.

77. From April onwards, some of the Chokwe and Pende civilians in the town, for whom the Luba ethnic group was identified with the Kamuina Nsapu militia, carried out night-time reprisals against homes in predominantly Luba-speaking neighbourhoods, committing murder and burning down houses.

(d) Southern part of Kamonia territory

78. The Kamuina Nsapu militia entered the southern part of Kamonia territory, thus advancing into predominantly Chokwe areas. It became very active there from March 2017, particularly on the Mutena-Kamako road and along the border with Angola.

79. Between March and May, the Kamuina Nsapu militia was active in the town of Kamako. On 6 March, it made its first incursion and attacked the headquarters of the Congolese National Police, killing two or three officers. In response, the Congolese National Police arrested and unlawfully detained civilians, subjected them to inhuman treatment and summarily executed at least three of them. On 13 April, a large number of Kamuina Nsapu militia members took control of the town and recruited many children, both girls and boys. They beheaded at least 40 people in the *tshiota*, including a police colonel, State officials and persons accused of theft or witchcraft.

80. On 1 May, FARDC entered Kamako and regained control after violent clashes that left at least 50 people dead, including many unarmed children. FARDC took some bodies away in two trucks, while others were buried by residents and the Red Cross of the Democratic Republic of the Congo.

81. All along the Mutena-Kamako road and the border with Angola, similar abuses were committed by the Kamuina Nsapu militia and FARDC, including in the villages of Diboko, Lubami-Monga, Tshiniota, Sumbula, Mutshima, Lupemba, Mudjadja, Lumpedi, Kungu, Kilolo, Bakua Mukuna and Bwalu Kai. In addition, the Kamuina Nsapu militia's rape of women, including gang rape, and of a man, was documented in these villages or when the inhabitants of this part of Kamonia territory fled. In May, for example, men and boys from the village of Mudjadja were abducted from their homes by members of the Kamuina Nsapu militia and taken to the *tshiota* in Diboko, supposedly to be baptized. It became the scene of the beheading of at least 186 men and boys. Their bodies were buried in two mass graves by the Red Cross of the Democratic Republic of the Congo.

82. Incursions by members of the Kamuina Nsapu militia in the town of Kamonia began around 10 April, when at least 35 militia members, mostly children, were killed by the defence and security forces and members of the Bana Mura militia. During these incursions, the Kamuina Nsapu militia killed residents, raped women, looted homes and beheaded people associated with State authority. The Bana Mura militia members, for their part, followed orders from at least two civilian chiefs and a Congolese National Police colonel and acted in concert with members of the defence and security forces. At the same time, members of the Bana Mura militias committed abuses against the Luba-speaking and Bindi population, whom they suspected of supporting the Kamuina Nsapu militia. Several dozen people were killed during these crackdowns and their bodies were buried in about a dozen mass graves. Some houses were looted and others were burned down, sometimes with their inhabitants still inside. In the neighbouring village of Tshimunde, dozens of people were killed by Bana Mura militiamen. In April and May, FARDC also carried out summary executions, abducted girls and committed rape.

83. In the wake of the targeted attacks and killings perpetrated by the Bana Mura militiamen, the Luba-speaking population of the town of Kamonia fled en masse to the town of Tshikapa. On the road linking the two cities, Bana Mura militiamen raped, summarily executed and mistreated those fleeing. FARDC also extorted and beat civilians and raped women and girls fleeing the violence. A woman who was seven months pregnant was raped by a member of FARDC and then by a member of the Bana Mura militia. Barriers were set up along the road, either by the Bana Mura militiamen or by the defence and security forces, or jointly, and many abuses were committed against Luba-speakers. Witnesses described passing through villages that had been deserted or burned to the ground and seeing many corpses, including those of women and children.

84. In March, the Kamuina Nsapu militia arrived in the Lovua-Luthsima area and beheaded many people, including in the villages of Senge (or Cinq) and Mvula-Milenge. In response, the Bana Mura militias intensified their activities. Between 24 and 26 April, large numbers of Luba-speaking men, women and children were injured or killed in attacks planned by the Bana Mura militiamen in the villages of Senge, Camp Kwilu, Kakondo and Mvula-Milenge. The Bana Mura militias were composed of Chokwe people, armed with rifles and machetes, some of which had been provided by the chief of Muyeji village. The Bana Mura militiamen were clearly targeting Luba-speaking residents.

85. A barrier had been set up by the Bana Mura militiamen along the banks of the Tshikapa River at Kakondo, to prevent Luba-speakers from escaping. Those who spoke Chokwe were allowed to pass. Many Luba-speaking residents, including children, were executed there, at the river crossing. Others were mistreated or killed as they fled. Women and girls were raped. In some cases, FARDC supported and guided the Bana Mura militiamen during the attacks. In others, they escorted displaced groups. FARDC, however, did not intervene to prevent the numerous abuses committed by the Bana Mura militiamen against Luba-speakers.

86. At the Tshikapa River crossing, Bana Mura militiamen separated Luba-speaking men and women not of childbearing age, beheaded them and threw their bodies into the river. The other women and girls were taken to farms owned by individuals belonging to the Chokwe ethnic group, including in Sha-Findji, Tshikala and Kisasa. The women and girls sent to those farms were placed under constant surveillance and some had to work all day. They were repeatedly raped during their captivity, sometimes several times a day, often for months at a time. According to numerous victims, it was the perpetrators'

intention for them to give birth to Chokwe children, as ethnicity is passed on through the male line. Luba-speaking children of all ages were also brought to the farms, where they were mistreated and malnourished. In some cases, the names of Luba-speaking children were changed to Chokwe names. At the time of writing this report, women and children were still being held on the farms.

(e) Northern part of Kamonia territory

87. In villages located in the north of Tshikapa, persons belonging to the Pende ethnic group calling themselves Écurie Mbe attacked Luba-speakers and injured and killed civilians, abducted children who were later reportedly enslaved and looted and burned down homes.

VIII. Consequences of the Kasaï crisis and the current situation

88. Since August 2017, the level of violence has decreased in all the provinces of Kasaï. However, crisis-related violence is still being reported, indicating that the causes of the conflict have not yet been addressed. FARDC has continued to use excessive force in operations against the Kamuina Nsapu militia. Persons wrongfully suspected of belonging to the militia continue to be detained, beaten or killed. Villages suspected of harbouring militia members have been looted or burned down. For example, on 30 November, in Kamonia territory, Kasaï Province, a FARDC force raided the village of Kabeya-Lumbu, which they associated with the Kamuina Nsapu militia. The soldiers opened fire on the population near the market after food had been distributed by a humanitarian organization, killing and wounding numerous people. In general, the strong military presence in Kasaï has led to the harassment of the population; numerous cases of extortion have been reported, particularly at FARDC-controlled roadblocks.

89. The Kamuina Nsapu militia has remained active, especially in Kasaï Central, and continues to recruit members, including children, and to carry out attacks, albeit on a lesser scale. For example, on the night of 30 April 2018, militia members attacked and killed the acting customary chief of Kamuina Nsapu village, who was close to provincial authorities, along with three members of his family.

90. In the southern part of the territory of Kamonia, strained relations between members of the Chokwe and Luba ethnic groups have also led to attacks on villages by the Bana Mura militias and clashes between the Bana Mura militiamen and persons belonging to the Luba ethnic group over access to mining sites. Luba women, sometimes with their children, continue to be enslaved by Bana Mura militiamen. Despite advocacy efforts by some international organizations, the response of defence and security forces to these crimes remains insufficient. What is more, the presence of the Bana Mura militias prevents Luba internally displaced persons from returning to their villages of origin.

91. The violence in Kasaï has caused an acute and unprecedented humanitarian crisis, with the displacement of an estimated 1.4 million people, including 35,000 refugees in Angola. According to figures from the World Food Programme and the Food and Agriculture Organization of the United Nations, some 3.2 million people continue to be affected by severe food insecurity, and malnutrition rates are high, especially among children.

92. The team of international experts has been shocked by the humanitarian situation, in particular the precariousness of the groups displaced by the violence. Many of the people interviewed had spent weeks or even months living in extremely difficult conditions before reaching cities such as Tshikapa or Kikwit. They had fled the violence without any help or with minimal assistance or relief. Some displaced people, including children, have died of malnutrition or disease. The proliferation of barriers controlled by armed factions has impeded access to fields, which, in turn, has affected the local economy. Lastly, the collection of illegal taxes has raised the price of basic goods.

93. Children have been particularly affected by the violence in Kasaï; they have been both the main victims and the main perpetrators of the violence. According to figures from

the United Nations Children's Fund (UNICEF), as at 30 August 2017, 1,220 boys and 658 girls had been recruited and used by the Kamuina Nsapu militia. However, the team believes the numbers are in fact much higher and the recruitment is ongoing. Many children have been abducted, wounded, mutilated, detained or executed. Some have seen their parents beheaded or beaten, or their mothers raped. Many of them have been forced to fight on the front line without weapons or with dummy weapons, knives or, occasionally, traditional rifles. They have been forced to kill and decapitate bodies. The physical and psychological trauma and stigmatization suffered by these children will require long-term care. This massive use of children belonging to the same ethnic group has multiple consequences for their community and creates a climate of suspicion towards them, which can generate extreme reactions.

94. UNICEF estimates that, since the beginning of the crisis in Kasaï, 416 schools and 224 health centres have been looted or destroyed. Schools and other educational establishments were prime targets of the Kamuina Nsapu militia.

95. A significant number of victims of sexual violence, mainly rape, have described the difficulties that they have faced. In addition to the medical and psychological problems they suffer, survivors are also ostracized by their families and communities owing to the weight given to tradition and the resulting economic and social challenges. Many women have been raped in front of their husbands, children or other family members. It is therefore the entire social fabric of Kasaï that is suffering the consequences of this sexual violence. Most rape victims are reluctant to report their ordeal for fear of stigmatization and owing to a general feeling of mistrust towards the justice system and a lack of effective reparation.

IX. Legal characterization

96. The acts of violence committed against civilians are violations of human rights and international humanitarian law that constitute international crimes.

A. Crimes against humanity

97. Article 7 (1) of the Rome Statute of the International Criminal Court defines crimes against humanity as acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The adjective "widespread" connotes the large-scale nature of the attack and the existence of a certain number of victims, whereas the adjective "systematic" refers to the organized nature of the acts of violence and improbability of their random occurrence. The presence of combatants among the civilian population does not deprive this population of its civilian status.

98. The attacks perpetrated by the defence and security forces, the Kamuina Nsapu militia and the Bana Mura militias as described in the preceding sections were carried out against civilian populations in a widespread and systematic manner, pursuant to a State or organizational policy to commit such an attack. These attacks thus constitute crimes against humanity, including murder, rape or any other form of sexual violence of comparable gravity, enslavement, including for sexual slavery, persecution and other inhuman acts.

B. War crimes

99. Under article 8 (2) (c) and (e) of the Rome Statute, war crimes are defined, in the case of an armed conflict not of an international character, as serious violations of article 3 common to the four Geneva Conventions of 1949 against persons taking no active part in the hostilities, and other serious violations of the laws and customs applicable in armed conflicts.

100. The team of international experts has reasonable grounds to believe that, as from August 2016 and during the period covered by this report, there was an armed conflict not of an international character in Kasaï between FARDC and the Kamuina Nsapu militia. In order to establish the existence of such a conflict, two criteria must be met: a minimum level of organization of the parties to the conflict and a certain intensity of violence.

101. The facts presented in this report lead to the conclusion that the Kamuina Nsapu militia is an armed group with a sufficient level of organization to conduct a protracted armed conflict, as demonstrated for example by the existence of chains of command, a concrete strategy, the ability to recruit and train combatants, the existence and enforcement of disciplinary sanctions to ensure compliance with orders and the ability to plan and launch coordinated and large-scale military operations.

102. The facts also show that the intensity of the violence, including the number, duration, frequency and severity of the armed confrontations and their spread through four provinces over a prolonged period, far exceeded that associated with mere situations of internal unrest or tension. The number of victims and displaced persons fleeing the fighting, the scale and extent of the destruction across four provinces, the type and numbers of the government forces involved and the establishment of a military operations sector to deal with the situation also support this conclusion.

103. Many of the acts described above were committed by FARDC and the Kamuina Nsapu militia against persons taking no active part in the hostilities, or in violation of the laws and customs applicable to armed conflict, in cases of armed conflict not of an international character. They thus constituted war crimes. These crimes include murder, mutilation, rape or any other form of sexual violence of comparable gravity, looting, intentionally directing attacks against the civilian population as such or against civilians taking no active part in hostilities, intentionally directing attacks against religious buildings, schools and hospitals that are not military objectives, and conscripting or enlisting children under the age of 15 into armed groups and forcing them to play an active part in hostilities.

C. Human rights violations

104. The facts presented in this report lead to the conclusion that the following human rights in particular have been violated: the right to life, the right to physical and mental integrity, the right to liberty and security of person and the right to freedom of movement. The cases of enslavement and the recruitment and use of child soldiers that have been observed also constitute human rights violations. These violations have had a direct impact on the enjoyment of economic, social and cultural rights by the people of Kasaï.

X. Conclusions and recommendations

A. Conclusions

105. **The team of international experts is appalled by the dire human rights situation prevailing in the Kasaï region since 2016. It is particularly concerned about the widespread nature of the violence that its investigations have revealed. This report relates only to a small number of the acts and crimes committed. Although the team is not able to give an exact number of victims, it estimates that several thousand people have lost their lives during the crisis. The team is also concerned about the low level of attention that this tragedy has been given.**

106. **The team confirms that the defence and security forces, the Kamuina Nsapu militia and the Bana Mura militias have deliberately killed civilians, including many children. They have committed numerous atrocities, including mutilation, rape and other forms of sexual violence, and destroyed entire villages. The team believes some of the abuses committed by the defence and security forces, the Kamuina Nsapu militia and the Bana Mura militia constitute crimes against humanity and war crimes, as well as violations and abuses of human rights.**

107. The violence in Kasaï has awakened latent ethnic tensions and, since the beginning of 2017, the conflict has taken on an ethnic dimension, particularly in Kamonia territory. The team is of the view that the abuses committed by the Bana Mura militia against members of the Luba ethnic group may be characterized as persecution on political and ethnic grounds constituting crimes against humanity.

108. The team considers that there is an urgent need for a militia disarmament policy and a reconciliation process so as to forestall a new wave of violence and to enable the return of internally displaced persons and refugees.

109. Impunity remains a very serious problem, given the scale and gravity of the crimes in question. While a few judicial proceedings have been initiated and some decisions handed down, the efforts made to date are clearly insufficient to provide a satisfactory response to the victims in view of the nature of the crimes. Rigorous and extensive work remains to be done by the judicial authorities to ensure that the perpetrators of the crimes linked to the wave of violence are brought to justice and that the rights of the very numerous victims are effectively restored. While it is primarily the responsibility of the authorities of the Democratic Republic of the Congo to try the perpetrators of international crimes, the team recalls that the Prosecutor of the International Criminal Court, which is already investigating the situation in the Democratic Republic of the Congo, has expressed concern about the acts of violence committed in Kasaï and has indicated that she will continue to monitor the situation closely.

B. Recommendations

110. The international team of experts recognizes the urgent need to begin combating impunity forthwith by punishing the most serious crimes committed by all those involved in the crisis. However, in order to prevent the violence from recurring, bring justice to the victims and foster reconciliation, punishment for the most serious crimes will not, alone, be sufficient.

111. The team recommends that the authorities of the Democratic Republic of the Congo take the following steps:

(a) Engage in an inclusive process of transitional justice aimed at establishing the truth, identifying the root causes of the crisis and providing redress to victims, in order to ensure reconciliation;

(b) Honour their international commitments and enforce existing laws;

(c) Strengthen the capacity of Kasaï military prosecutors' offices to investigate, prosecute and try perpetrators, including the highest-ranking officials, for the many international crimes committed in Kasaï since 2016, by:

(i) Increasing the human and logistical resources of military prosecutors' offices;

(ii) Ensuring that the officers in charge of the prosecutors' offices have at least the same rank as the operational officers who may be held criminally liable;

(iii) Applying a prosecution strategy so as to ensure that the perpetrators of crimes from all the parties involved in the violence are brought to justice;

(d) Ensure that specialized personnel are assigned the specific task of investigating and prosecuting crimes of sexual violence;

(e) Enforce the application of judicial protection measures for victims of crimes of sexual violence and, by providing legal assistance, encourage them to lodge complaints and to testify before the courts;

(f) Ensure that persons convicted of crimes of sexual violence are given appropriate sentences and are prohibited from joining or remaining in the defence and security forces;

(g) Ensure that, in cases where minors are to be tried, investigators are given specialized training and that accused children are tried in specialized juvenile chambers with appropriate procedures in place;

(h) Enforce the application of judicial protection measures for child victims in order to facilitate their participation and to protect their identity;

(i) Take concrete and effective steps to ensure, by incorporating a gender perspective, that victims of sexual violence and child victims have access to appropriate medical, psychosocial and socioeconomic services;

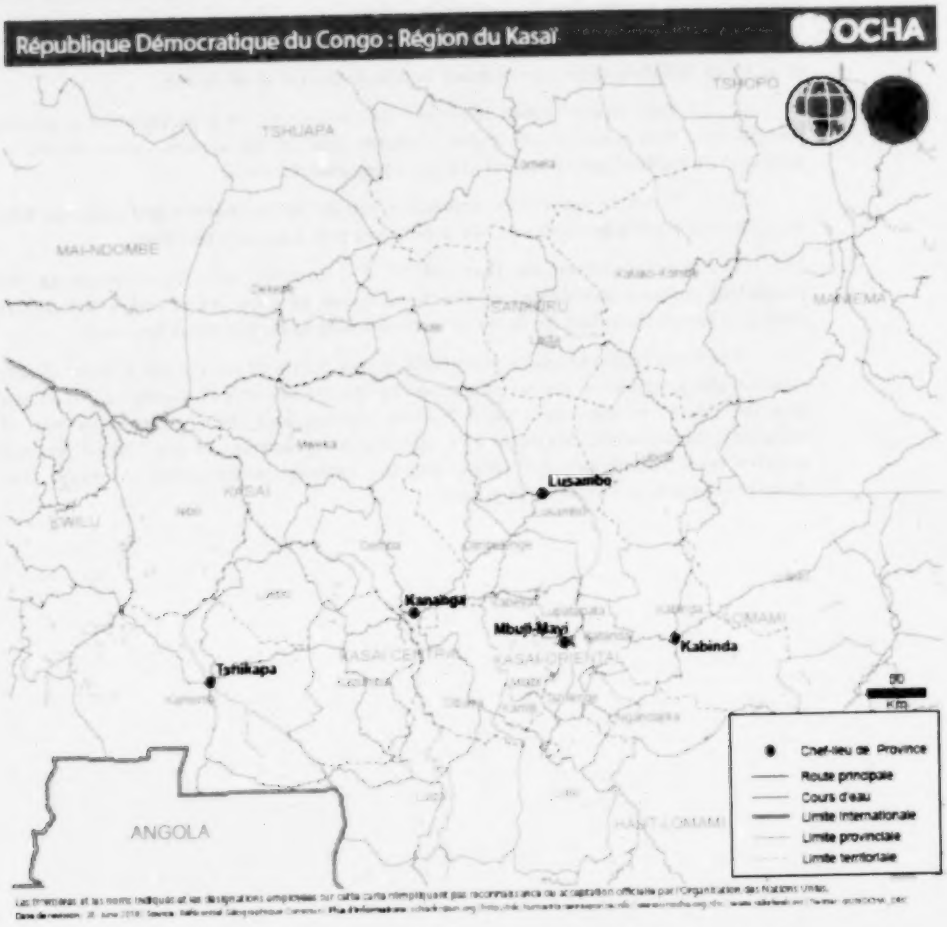
(j) Work to secure the immediate release of the women and children who are still held captive by the Bana Mura militiamen in Kamonia territory.

112. **The team recommends that MONUSCO provide practical support to the competent judicial authorities in the prosecution of perpetrators of international crimes in Kasaï, including by facilitating the holding of mobile court hearings.**

113. **The team recommends that the Secretary-General of the United Nations closely monitor the progress of the investigations by the Democratic Republic of the Congo into the deaths of the two United Nations experts and their companions and, if necessary, broaden the mandate and increase the resources of the United Nations country team responsible for supporting the national investigation to ensure that those responsible are brought to justice.**

Annex

Map of Kasaï



Map provided courtesy of the United Nations Office for the Coordination of Humanitarian Affairs.